IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1390 of 2006
With
CRIMINAL MISC.APPLICATION No. 7082 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KASHIRAM JERAM KHANDEKA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR VM PANCHOLI for Applicant(s) : 1,
Mr S.S. Patel, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,
UNSERVED-REFUSED (R) for Respondent(s) : 2,
MR CR ABICHANDANI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 07/11/2006

ORAL (COMMON) JUDGMENT

1. Since the parties in both the proceedings are same, represented by the same learned counsel and

since the parties are stated to have arrived at an overall amicable settlement of the disputes among them, both the matters are disposed by this common judgment at the request of the learned counsel in terms of the agreement stated to have been arrived at.

2. Criminal Misc. Application No.7082 of 2006 is filed by the original accused in M. Case No.1 of 2006 for which the FIR was registered on 02.6.2006 in Rapar police station of Kachchh district. The complainant in that case is the petitioner in Special Criminal Application No.1390 of 2006 wherein, the original complainant has challenged the order dated 26.7.2006 of the learned Additional Sessions Judge, Kachchh whereunder custody of the muddamal JCB machine was denied to the original complainant.

3. It was submitted by the learned counsel for the parties concerned on both sides that the original complaint and the proceedings came to be initiated pursuant to the failure of the original complainant in repaying the loan taken from the finance company

managed by the petitioner in Criminal Misc.Application No.7082 of 2006. That basic dispute was agreed to be settled broadly on the conditions that the original complaint registered as FIR/M.Case No.1 of 2006 shall be quashed as withdrawn by the complainant, custody of the muddamal JCB machine shall remain with the original complainant and he shall regularly pay to the finance company all the instalments due along with the interest due thereon in accordance with the original terms of agreement under which the complainant was granted the loan. It was agreed that the original complainant shall abide by each and every condition of the loan agreement and, in case of violation or breach of any of the conditions, the finance company represented by the petitioner in Criminal Misc.Application No.7082 of 2006 shall be entitled to take over possession and custody of the muddamal JCB machine from whichever place it may, for the time being, be deployed, in accordance with the conditions of the loan agreement. It was further stated to have been agreed that, in view of the disturbed use of the muddamal machine during the pendency of the present proceedings, the

repayment period of the loan was required to be extended and, therefore, the original complainant would be required to make the full and final payment of the loan to the finance company by the end of June, 2008 instead of the stipulated period extending upto May, 2008. It was also stated to have been agreed that the original complainant shall, within a period of 15 days from today, withdraw the Civil Suit filed by him in respect of the loan and the muddamal JCB machine which are the subject matter of this litigation.

4. In view of the above terms of the agreement expressed on instruction and recorded in presence of the original complainant, Criminal Misc.Applciation No.7082 of 2006 is required to be allowed. Accordingly it is **allowed.** The FIR registered on 02.6.2006 as M.Case No.1 of 2006 in Rapar police station shall stand quashed and withdrawn. Special Criminal Application No. 1390 of 2006 shall also stand **partly allowed** in terms of the agreement recorded hereinabove and accordingly the muddamal JCB machine shall remain in the custody of the petitioner

therein on the conditions mentioned hereinabove. Rule is made absolute accordingly with no order as to costs. Direct Service is permitted.

[D. H. Waghela, J.]

msp